IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 28.4.2011

(i) LPA No. 744 of 2011

First Appellate Authority cum Additional Director General of Police and another .....Appellants

vs.

Chief Information Commission Haryana and another .....Respondents

(ii) LPA No. 745 of 2011

First Appellate Authority cum Additional Director General of Police and another .....Appellants

vs.

Chief Information Commission Haryana and another .....Respondents

CORAM: - HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE A.N.JINDAL

Present: - Mr. Narender Hooda, Addl. AG, Haryana.

HEMANT GUPTA, J

This order shall dispose of LPA Nos. 744 of 2011 and 745 of 2011 arising out of two separate orders passed by learned Single Judge raising identical question of law.

In LPA No. 744 of 2011, respondent No. 2-Rajender Verma sought information under the provisions of Right to Information Act, 2005 (hereinafter to be referred as the 'Act') in relation to the number of posts available and filled in the cadre of the ASIs/SIs/Inspectors and language stenographers and a copy of the inquiry report sent to ADGP on 9.8.2009. This information was denied by State Public Information Officer, for the reasons that the same is exempt from disclosure in view of the notification dated 29.12.2005

issued by the Haryana Government under Section 24(4) of the Act. The appeal was also dismissed by learned first Appellate Authority on 13.2.2009. However, the State Information Commissioner, Haryana accepted the second appeal filed by respondent No. 2 on 16.7.2009. It was specifically pleaded in appeal that the information sought relates to violation of human rights and corrupt practices. It was prayed that information be supplied for eradication of corruption and violations of human rights from the sensitive department of CID. The appeal was allowed and the writ petition against the said order was dismissed. Learned Single Judge returned the following finding: -

> "11. As is evident from the record that the information sought by respondent No. 2 is general in nature, such as number of posts, occupied, vacant and adjusted between 1989-2003 of ASI/SI and Inspector. He has also sought the copy of inquiry report of complaint sent to Additional Director General of Police of Criminal Investigation Department on 9.8.2008 which related to corruption and human rights violation by the recruitment agency. Taking the nature of the information sought by respondent No. 2 into focus, the argument of State Counsel that the information cannot be supplied in view of the notification, pales into insignificant, particularly when such information pertaining to allegations of corruption and human rights violation are not otherwise covered under the exemption clause of Section 24(4) of Act as urged on behalf of the petitioners."

In LPA No. 745 of 2011, respondent No. 2 sought information in respect of action taken or suggested against the persons for grabbing and constructing the building illegally on the government land, supply of investigation report of the inquiry team of Shri Narinder ASI of the CM, Flying squad and the information collected by the Inquiry Officer. The information was again declined for the reasons that CID Department is exempt from the provisions of Act in view of the notification dated 29.12.2005. The First Appellate

Authority has dismissed the appeal filed. In second appeal before the State Information Commissioner, it was specifically pleaded that to protect the Haryana Government land from illegal hands of land grabbers is a matter of public importance and relates with equality of all citizens before the constitutional and legally constituted authorities and that the question of corruption at the level of District Administration arises. Learned State Information Commissioner allowed the appeal as the matter pertains to one involving the alleged illegal occupation of government land. Learned Single Judge in a writ petitions filed by the State held that the information sought by respondent No.2 pertains to allegation of corruption and against those persons who have illegally constructed buildings on the government land, therefore, such information is not covered under the exemption clause.

Since the question of law raised in both appeals is common, therefore, the appeals are being taken for decision together. It is argued by learned counsel for the appellant that the appellant-authority is exempted from the purview of the Act on the basis of the notification dated 29.12.2005. Since, the Act itself is not applicable, the information cannot be sought under the Act by respondent No. 2 It is argued that the information which is sought does not pertain to violation of human rights or corruption, therefore, the same cannot be supplied in terms of exception to Section 24(4) of the Act. The notification dated 29.12.2005 and the relevant extract of Section 24(4) of the Act reads as under: -

Notification: dated 29th December 2005

No. 5/4/2005-IAR-In exercise of the power conferred by sub-section (4) of section 24 of the “Right to Information Act” 2005

(Central Act No. 22 of 2005), the Governor of Haryana hereby specifies the intelligence and security organizations as mentioned in the schedule given below for the purpose of the said sub-section.

Schedule

(i) State Criminal Investigation Department (C.I.D.) including the Crime Branch:

(ii) Haryana Armed Police:

(iii) Security Organization of Police:

(iv) Haryana Police Telecommunication Organization:

(v) India Reserve Battalion:

(vi) Commando

Section 24(4)

Nothing contained in this Act shall apply to such intelligence and security organizations, being organizations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

Learned counsel for the appellant has argued that the learned State Information Commissioner has found that the information, which is sought by the applicant-respondent No. 2, is not sensitive in nature dealing with sovereignty and integrity of India, therefore, such information can be disclosed is not tenable as such ground for non disclosure is contemplated by Section 8 of the Act. It

is contended that in terms of Section 24(4) of the Act, the information which can be disclosed is in respect of the allegations of corruption and human rights violations but since the information sought does not relate to any of the excepted matters, the information cannot be sought.

We have heard learned counsel for the appellant and find no merit in the present appeal. Learned Single Judge has held that the information sought pertains to allegation of corruption and therefore, cannot be withheld by the appellant. The question needs to be examined is whether the information in respect of encroachment of the public land or of filling up the public post can be said to be the information "pertaining to allegation of corruption".

The expression "pertaining to allegation of corruption" is not defined in the Act. Even, the Prevention of Corruption Act, 1988 does not define what are the allegations pertaining to corruption? In the absence of any statutory definition in the Act, the ordinary meaning to the expression used in the Act has to be applied. The expression "pertaining to allegation of corruption" cannot be defined. It includes within its meaning many colours and shades of corruption. There cannot be any exhaustive definition that what are the allegations pertaining to corruption. But an attempt can be made to understand the scope of the expression used in the statute.

The General Assembly of United Nations in its meeting on 28th January 1997, vide resolution (A/RES/51/59) (available at http://mirror.undp.org/magnet/Docs/efa/corruption/Appendix1.pdf decided to take action against corruption. Such decision was necessitated on account of the seriousness of the problems posed by

corruption which may endanger the stability and security of the societies, undermine the values of democracy and morality and jeopardize social, economic and political development. The United Nations resolved after having convinced that the corruption is a phenomenon that currently crosses national borders and affects all societies and economics, international cooperation to prevent and control it as an essential.

After considering the work carried out by the international organizations, the United Nations resolved the International Code of Conduct of Public Officials. The same are reproduced as under: -

International Code of Conduct for Public Officials

I. **GENERAL PRINCIPLES**

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government.

2. Public officials shall ensure that they perform their duties and
functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.

3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

II. CONFLICT OF INTEREST AND DISQUALIFICATION

4. Public officials shall not use their official authority for the improper advancement of their own or their family's personal or

financial interest. They shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.

5. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest.

6. Public officials shall at no time improperly use public moneys,
property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.

7. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.

III. DISCLOSURE OF ASSETS

8. Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and/or dependants.

IV. ACCEPTANCE OF GIFTS OR OTHER FAVOURS

9. Public officials shall not solicit or receive directly or indirectly any gift or other favour that may influence the exercise of their functions, the performance of their duties or their judgement.

V. CONFIDENTIAL INFORMATION

10. Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.

VI. POLITICAL ACTIVITY

11. The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in the impartial performance of their functions and duties.

The first general principal is that the public office is a position of trust, implying the duty to act in the public interest and the public officials are to ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. The public officers are to be attentive, fair and impartial in the performance of their functions and had no time to afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them. Therefore, the information which relates to the working of a public office and whether such office acted in accordance with laws would be relevant information so as to exclude the allegation of corruption.

In Module III of the World Bank meant for "Youth for Good Governance", Distance Learning Program, it is stated that corruption is not just clearly "bad" cases of government officials skimming off money for their own benefit. It includes cases where the systems do not work well and ordinary people are left in a bind, needing to give a bribe for the medicine or the licenses they need. It is explained that there are many types of corruption, the bribery probably comes first to mind when the word corruption is heard but other common type of corruption is bribery, nepotism, fraud and embezzlement. It explains the following words: -

Bribery: - An offer of money or favors to influence a public official.

Nepotism: Favoritism shown by public officials to relatives or close friends.

Fraud: Cheating the government through deceit.

Embezzlement: Stealing money or other government property.

Administrative Corruption: Corruption that alters the implementation of policies, such as getting a license even if you do not qualify for it.

Political Corruption: Corruption that influences the formulation of laws, regulations and policies such as revoking all licenses, and gaining the sole right to operate the beer or gas monopoly.

The scope of expression administrative corruption includes arbitrariness in implementation of policies, grant of benefit to the officers in violation of the Rules. Therefore, the information in respect of the available vacancies and the manner in which such vacancies are filled up would be relevant to exclude the allegations of corruption.

Another write up is available on http://www.thegeminigeek.com. The word corruption is explained as destructive, ruining or the spoiling of the society or a nation. The corrupt society stops prevailing integrity, virtue or moral principles. It changes for the worse. Such a society begins to decay and sets itself on the road to self destruction. Corruption is an age old phenomena. Selfishness and greed are the two main causes of corruption. Political corruption is the abuse of the powers by state officials for their unlawful private gain. A corrupt society is characterized by immorality and lack of fear and respect for the

law. Corruption cannot be divorced from economics and inequality of wealth, low wages and salaries are some of the economic causes of corruption. Corruption has prevailed in all forms of government. Various forms of corruption include extortion, graft, bribery, cronyism, nepotism, embezzlement and patronage. Corruption allows criminal activities such as money laundering, extortion and drug trafficking to thrive.

As mentioned above, the expression pertaining to allegation of corruption cannot be exhaustively defined. The Act is to step-in-aid to establish the society governed by law in which corruption has no place. The Act envisages a transparent public office. Therefore, even in organizations which are exempt from the provisions of the Act, in terms of the notification issued under Section 24(4) of the Act, still information which relates to corruption or the information which excludes the allegation of corruption would be relevant information and cannot be denied for the reasons that the organization is exempted under the Act.

The information sought in the present case is in respect of the number of vacancies which have fallen to the share of the specified category and whether such posts have been filled up from amongst the eligible candidates. If such information is disclosed, it will lead to transparent administration which is antithesis of corruption. If organization has nothing to hide or to cover a corrupt practice, the information should be made available. The information sought may help in dispelling favoritism, nepotism or arbitrariness. Such information is necessary for establishing the transparent administration. Therefore, we do not find any illegality

in the order passed by the State Information Commissioner, Haryana and affirmed by learned Single Judge in the orders impugned in the present appeals.

Dismissed.

(HEMANT GUPTA)
JUDGE

28.4.2011
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(A.N.JINDAL)
JUDGE